

OFFICE OF THE ATTORNEY GENERAL

83-000007



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OCT 4 1982

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Honorable Roy C. Snead, Jr.
Sheriff
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Counties - Constitutional
Amendments - Salaries -
Sheriffs

Amendment pertaining to
Calhoun County was adopted
when it was approved by
voters of the State, although
it did not receive a
favorable vote in Calhoun
County. Compensation for
deputy sheriffs of Calhoun
County becomes effective
October 1, 1982.

Dear Sheriff Snead:

Acknowledgement is made of your request for an opinion from the Attorney General regarding Act No. 82-171 and Act No. 82-362 of the 1982 Regular Legislative Session. Act No. 82-171 was a proposed amendment which authorized the altering of court costs in Calhoun County. It was adopted as Amendment No. 3 by the voters of the State in the September 7, 1982 election although, as you stated in your letter, it did not receive a majority of the votes in Calhoun County. Act No. 82-362 was enacted to become effective only if the Amendment proposed by

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Act No. 82-171 was ratified and it provided minimum compensation for all deputy sheriffs in Calhoun County.

In light of the above stated facts you presented the following questions:

(1) Does the first proviso in Amendment #3 require local approval of the amendment for it to become effective or does it merely require a county wide vote on the commission's attempts to alter court costs?

(2) Assuming proclamation by Governor James of Amendment #3 having passed will Act 82-362 mandate compensation for my deputies in accordance with its terms?

To answer your first question the provision in the amendment about which you asked reads as follows:

Section 1. The following amendment to the Constitution of Alabama is proposed, and shall become valid as a part of the Constitution when approved by a majority of the qualified electors voting thereon and upon proclamation by the Governor:

PROPOSED AMENDMENT

The county governing body may from time to time, by resolution fix, alter and regulate the costs and charges of courts in Calhoun County, and the method of disbursement thereof, upon notice to affected citizens not less than 60 days from the effective date. Provided, however, a majority of the qualified electors of the county shall first give approval therefor in an election

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called by the county governing body to determine this issue; provided further, however, that if a majority of the qualified electors of Calhoun County who participate in the election held on the adoption of this amendment vote in favor thereof, no further election need be held.

The language in the first sentence of the proposed amendment is taken from Sections 284 and 285 of the Constitution of Alabama, 1901 which provide the procedure for amending the State Constitution. These provisions require a proposed amendment to be approved by the qualified electors of the State. In Harris v. Walker, Supt. 199 Ala. 51, 74 So. 40, the Supreme Court of Alabama concluded that a proposed amendment is ratified when it is approved by a majority of the votes cast on the amendment although such majority may not constitute a majority of the votes cast at the general election. Thus, it is indicated and can be gathered from this decision of the Court that at the present time although an amendment was not approved by the voters of the county to which it applied, if it was approved by a majority of the voters of the state it is ratified and becomes effective. This conclusion will not apply to future amendments pertaining to only one county because of the recent adoption of an amendment which stated that proposed amendments to the Constitution pertaining to only one county are to be approved only by the voters of that county.

Thus, in summation the amendment proposed in Act No. 82-171 became effective when it was ratified by the majority of the voters in the State although it was not ratified by a majority of the voters in Calhoun County.

The election called for in the latter part of the above quoted portion of the proposed amendment is to be held for the voters of Calhoun County to give their approval to a change in the altering of the court costs of the county and the method of disbursing these costs.

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The provision further states that if a majority of the electors in the county who voted on the adoption of the amendment did in fact approve the Amendment, it is not necessary to hold the second election. However, as it has been stated, since the Amendment did not receive a favorable vote in Calhoun County another election must be held before the court costs can be altered.

Turning to your second question, the answer is to be given in the affirmative. Act No. 82-362 plainly states that it is to become effective on October 1, 1982 provided the constitutional amendment authorizing the altering of court costs in Calhoun County is ratified and becomes effective. In that the voters of the State did approve this Amendment the compensation for deputy sheriffs provided by Act No. 82-362 goes into effect.


I hope that your questions have been sufficiently answered.

If our office can be of further assistance, please contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By-


LYNDA F. KNIGHT
Assistant Attorney General

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